

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIK LEE GLASS,

3:12-cv-00627-AC

Plaintiff,

ORDER

v.

CAROLYN W. COLVIN,¹
Acting Commissioner,
Social Security
Administration,

Defendant.

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and Recommendation (#25) on July 29, 2013, in which he recommends that this Court reverse the decision of the Commissioner, remand for an immediate award of benefits, and enter a final judgment

¹Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin should be substituted for Michael J. Astrue as Defendant in this case. No further action need be taken to continue this case by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405.

pursuant to sentence four of 42 U.S.C. § 405(g). Defendant filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

The Magistrate Judge refers in at least two places to an application for Disability Insurance Benefits (DIB) under Title II of the Social Security Act (the Act). *See* 42 U.S.C. §§ 401-33. The Commissioner, however, notes this case involves only a claim by Plaintiff for Supplemental Security Income disability benefits under Title XVI of the Act. *See* 42 U.S.C. §§ 1381-1383f. Nevertheless, the Court finds the Magistrate Judge's brief references to DIB do not affect or alter the substance of his analysis nor the fact that his analysis applies to and supports his Findings and Recommendation as to Plaintiff's claim for Supplemental Security Income disability benefits.

This Court has carefully considered the Commissioner's Objections and concludes they do provide a basis to modify the

Finding and Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and does not find any other error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **MODIFIES** Magistrate Judge Acosta's Findings and Recommendation (#25) to eliminate all references to disability insurance benefits under Title XVI of the Social Security Act and **ADOPTS** the remainder of Magistrate Judge Acosta's Findings and Recommendation. Accordingly, the Court **REVERSES** the decision of the Commissioner and **REMANDS** this matter pursuant to sentence four of 42 U.S.C. § 405(g) for the immediate calculation and award of benefits.

IT IS SO ORDERED.

DATED this 20th day of August, 2013.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge